

MAIL ROOM

Federal Communications Commission

DA 01-798

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
New Albany-Floyd County)	File No. SLD-133549
Consolidated School Corp.,)	
New Albany, IN)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: March 29, 2001

Released: March 30, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by the New Albany-Floyd County Consolidated School Corporation (New Albany), New Albany, Indiana.¹ New Albany seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, denying New Albany's request for funding of network management and monitoring services.² For the reasons discussed below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

¹ Letter from Dennis A. Cahill, New Albany-Floyd County Consolidated School Corporation, to Federal Communications Commission, filed May 30, 2000 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger E. Whaley, New Albany-Floyd County Consolidated School Corporation, dated August 17, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger Whaley, New Albany-Floyd County Consolidated School Corporation, dated May 3, 2000 (Administrator's Decision on Appeal).

discounts for eligible telecommunications services, Internet access, and internal connections.³

3. Applicants may only seek support for eligible services.⁴ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁵ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁶ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than 30 percent of the total.⁷ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. In the instant Request for Review, New Albany seeks review of a decision by SLD to deny New Albany's requested funding because SLD concluded that a substantial portion of the Funding Request Number (FRN) 198468 consisted of network management and monitoring services, which SLD has determined to be services ineligible for support under the program.⁸ Section 54.501 of the Commission's rules provides that "[t]elecommunications carriers shall be eligible for universal service support under this subpart for providing supported services to eligible schools, libraries and consortia including those entities."⁹ Citing language in the rule that "[f]or the purposes of this subpart, supported services provided by telecommunications carriers include all commercially available telecommunications services,"

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504 *et seq.*

⁵ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

⁶ Form 471 Instructions at 16.

⁷ The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

⁸ Funding Commitment Decision Letter; Administrator's Decision on Appeal. See SLD web site, Eligible Services List (March 27, 1998) <<http://www.sl.universalservice.org/reference/eligible.asp>>.

⁹ 47 C.F.R. § 54.501(a).

New Albany contends that the Ameritech Managed Router Service, the network management and monitoring service for which it seeks discounts, is commercially available and therefore eligible for discounts.¹⁰

5. We hold that SLD properly denied discounts to New Albany. Since at least March 27, 1998, network management and monitoring systems have been clearly identified on SLD's website as ineligible.¹¹ The March 27, 1998 ineligible services list on the SLD website defined network management services as "[a] system of equipment used in monitoring, controlling, and managing a data communications network."¹² The documentation that New Albany has provided as part of the instant appeal supports SLD's determination that the requested Ameritech services are ineligible network management services.¹³ New Albany should thus have been aware that it was seeking discounts for ineligible services.

6. New Albany is mistaken in its contention that the requested services are "specifically cited" as eligible for discounts under the Commission's rules.¹⁴ Citing only section 54.502, which states that "supported services provided by telecommunications carriers include all commercially available telecommunications services," New Albany argues that because network monitoring is "readily available to any commercial customer" from a telecommunications carrier, network monitoring is eligible for discounts as a commercially available telecommunications service.¹⁵ New Albany, however, misunderstands the term "telecommunications service" as defined in the Commission's rules. Section 54.5 defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."¹⁶ That section, in turn, defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."¹⁷

7. Network monitoring is not a telecommunications service under the rules of the

¹⁰ Request for Review at 2, citing 47 C.F.R. § 54.502.

¹¹ See SLD web site, Eligible Services List (March 27, 1998) <<http://www.sl.universalservice.org/reference/eligible.asp>>.

¹² See *id.*

¹³ See Request for Review, attachments (describing Ameritech's network monitoring system and the Ameritech Managed Router Service, including "Comprehensive Network Management," as utilizing "advanced network management tools to continuously monitor the backbone network and the router and [to coordinate] maintenance and repair.").

¹⁴ Request for Review at 2.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 54.5; 47 U.S.C. 153 (46).

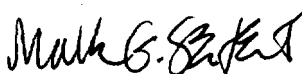
¹⁷ 47 C.F.R. § 54.5; 47 U.S.C. 153 (43).

program, because network monitoring is not necessary to the transmission of information.¹⁸ Nor is network monitoring eligible as an Internet access service, because it is not necessary to provide conduit access to the Internet.¹⁹ Similarly, network monitoring is not eligible as the installation and maintenance of internal connections, because it is not "necessary to transport information all the way to individual classrooms."²⁰ In sum, network monitoring is not an eligible service under program rules.

8. In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for clearly and accurately describing its funding request and for understanding all applicable program rules. The applicant must act to ensure that its request for discounts satisfies the Commission's policies as well as program rules.²¹ Here, New Albany's misunderstanding of program rules provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the New Albany-Floyd County Consolidated School Corporation, New Albany, Indiana, on May 30, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁸ See 47 C.F.R. §§ 54.5, 54.502; 47 U.S.C. 153 (43).

¹⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9008, para. 436 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order in part and reversing and remanding on unrelated grounds*), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000); 47 C.F.R. § 54.503.

²⁰ *Id.* 12 FCC Rcd at 9021, para. 459; 47 C.F.R. § 54.503.

²¹ 47 C.F.R. § 54.504 *et seq.*